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No. 230

Filed Mar. 28, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1899.

WALTER M. McCAIN, ET AL.,

Appellants,

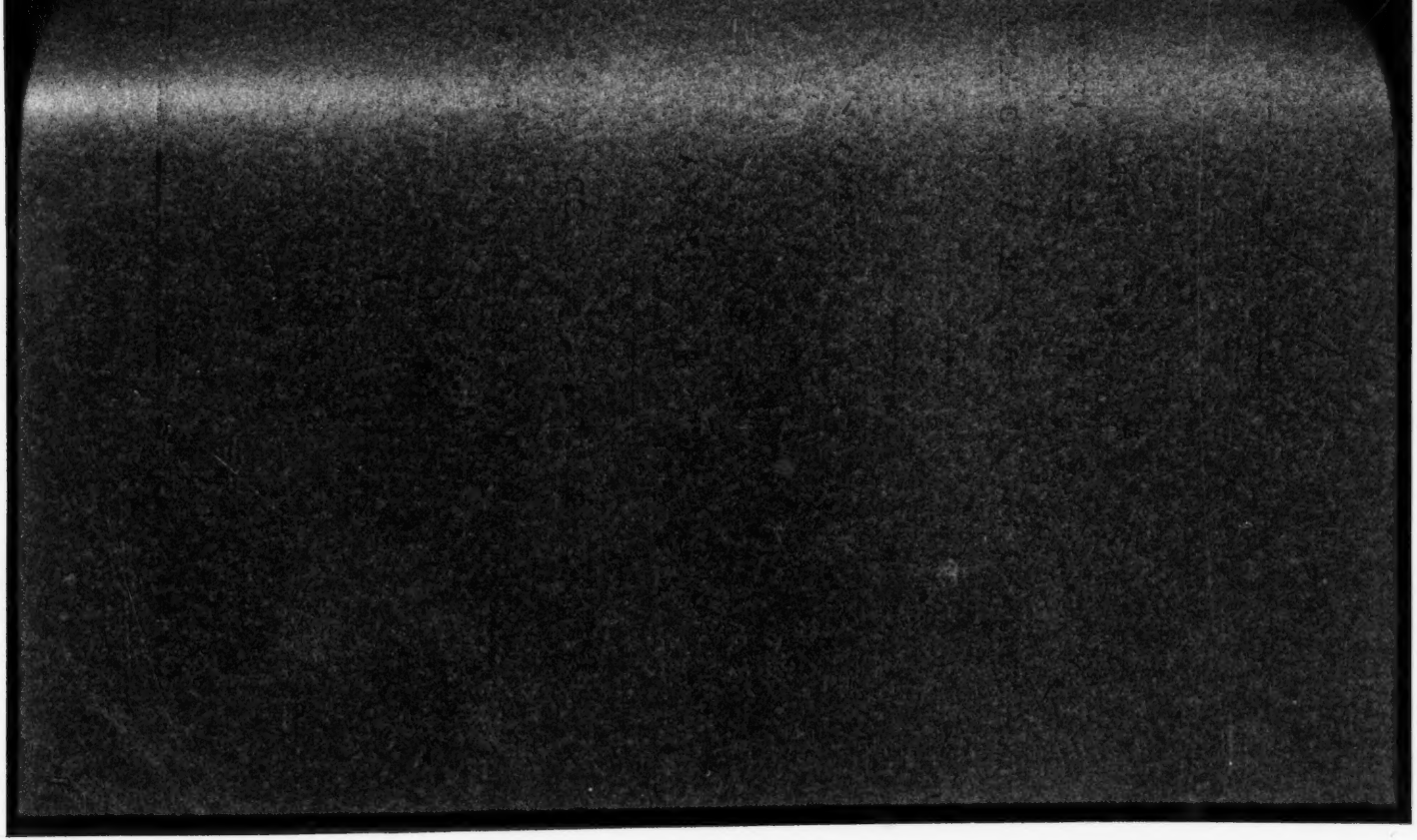
vs.

CITY OF DES MOINES, ET AL.,

Appellees.

BRIEF OF WALTER M. McCAIN, ET AL., APPELLANTS.

REPLY TO THE DES MOINES BRICK MANUFACTURING COMPANY, APPELLEE.



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IN REPLY TO THE DES MOINES BRICK MANUFACTURING COMPANY, APPELLEE.

The questions in the case are in substance as stated in the appellees' brief.

It is true that one of the objects to be attained by the complainants' bill is to avoid the payment of special assessments on account of paving the street in front of the property of the appellants.

The simple question is then whether the case presented by appellants' bill is one arising under the Constitution of the United States and that depends upon the allegations of the bill and not upon the facts as they may subsequently turn out to be (*City Railway Co. vs. Citizens Street Railway Co.*, 166 U. S., 557.)

Complainants claim is, that under a law declared to be void and unconstitutional by the Supreme Court of the State of Iowa, the City of Des Moines, is still exercising municipal control and jurisdiction over the complainants' property. The decision of the Supreme Court of the State of Iowa, in the case of the *State ex rel West vs. the City of Des Moines*, 96 Iowa, 521, is misconceived by appellees.

The Supreme Court of the State of Iowa decided, in that case that the law was unconstitutional and void, but that the relator being a non-resident of the City of Des Moines, paying taxes in the annexed territory in the nominal sum of less than a dollar a year, in view of the peaceful relations that were existing, could not be heard so as to disturb the municipal authority of the City of Des Moines, over the territory where relator's property was. Appellants' bill does not attempt to test the corporate existence of the City of Des Moines, but simply to test the right of that corporation to levy taxes for certain purposes upon appellant's property; and in the case of *Wilson vs. Lambert*, 168 U. S., 611, this court said, that "Courts of equity have jurisdiction to hear the complaints " of those who assert that their lands are about to be assessed and " subjected to liens by a board or commission, acting in pursuance " of the provisions of a statute which has been enacted under the " forms of law, but which, it is claimed is unconstitutional and " therefore does not avail to confer the powers sought to be " exercised."

Appellees lay stress on the proposition that the bill is without equity and that the remedy is at law. Appellees concede thereby the jurisdiction of this court and necessarily of the Circuit Court

to determine these questions, and ask a discussion of the merits. This is exactly what is claimed by appellees. Let the Circuit Gourt entertain jurisdiction and give us a full hearing which we have never yet had in any forum, as to our constitutional rights Appellants earnestly desire their day in court, and an orderly discussion and hearing of the whole case.

Equity recognizes a trust relation between municipal corporations and the public. The abuse of such trust will be restrained in equity.

Langworthy vs. Dubuque, 13 Iowa. 86;

Hyde Park vs. Chicago, 124 Illinois, 156.

The bill also shows affirmatively the inadequacy of legal remedies and that repeated illegal assessments are threatened, thereby invoking equity to avoid multiplicity of actions.

The Circuit Court however dismissed the bill on the sole ground that the parties being citizens of Iowa, no federal question was presented by the record and therefore the court had no jurisdiction. (Record pp. 13, 15, 16.) The court expressly refrained from deciding the equities of the bill. Had its decision been adverse on the merits, complainants would have further amended the bill.

It is admitted by appellants that the control of municipal corporations is a matter that is peculiarly within the jurisdiction of the state, but it is insisted that such control must be exercised under due processes of law as found in the constitution of the particular state and valid statutes thereunder. The constitution and the statutes of the state have been wholly ignored in this case and municipal control and jurisdiction of the city of Des Moines unlawfully extended over the territory in which the complainants reside and thereby appellants' property subjected to the payment of municipal taxes from which they derive no benefit whatever.

When the facts in this case are developed, it will be made to appear that by the act complained of, which the Supreme Court of the State of Iowa has declared to be in violation of the constitution of the state of Iowa, there was brought into the municipal control of the City of Des Moines more than forty (40) square miles of agricultural lands used wholly for agricultuaral purposes.

In the case of *Morford vs. Unger*, 8th Iowa; the Supreme Court of the State of Iowa held that an unreasonable extension of the limits of a city, so as to take in lands used solely for agricultural purposes was the taking of private property for public use without compensation.

WM. E. MASON,
WM. G. CLARK,
Solicitors for Appellants.